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**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON**

BADGER METER, INC. d/b/a NATIONAL
METER AND AUTOMATION, a
Wisconsin corporation

Plaintiff,

v.

ITRON, INC., a Washington corporation,

Defendant.

No.

COMPLAINT FOR BREACH OF
CONTRACT AND DAMAGES

COMES NOW, Plaintiff Badger Meter, Inc. formerly doing business as National Meter and Automation (“Badger Meter”), and for its cause of action against Defendant Itron, Inc. (“Itron”), alleges as follows:

I. PARTIES

1. Plaintiff Badger Meter is a corporation organized and existing under the laws of the State of Wisconsin.

2. Upon information and belief, Defendant Itron is a corporation organized and existing under the laws of the State of Washington with its principal place of business in Liberty Lake, Washington.

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II. JURISDICTION AND VENUE

3. The court has subject matter jurisdiction over this claim pursuant to 28 U.S.C. § 1332 because plaintiff is a citizen of Wisconsin and defendant is a citizen of Washington and the matter in controversy exceeds the sum of \$75,000.

4. This Court has personal jurisdiction over Defendant because upon information and belief the Defendant's principal place of business is located in Spokane County, Washington.

5. The contract signed between the Plaintiff and Defendant requires that controversies between the parties will be governed by the laws of Washington, without reference to Washington conflicts of law principles.

III. FACTS

A. **Background**

6. Badger Meter offers innovative flow metering and control solutions for smart water management, smart buildings and smart industrial processes, to help measure and protect resources.

7. Badger Meter has entered into municipal contracts to supply numerous Itron fixed-base systems to its customers for more than ten years. National Meter was a subsidiary of Badger Meter for six of these years.

B. **Badger Meter's Contract with Siemens Industry, Inc., Building Technologies Division's Contract for the Carpinteria Valley Water District Project.**

8. In 2017, Siemens Industry, Inc., Building Technologies Division's ("Siemens") contracted to provide the OpenWay RIVA Implementation ("Project") for the Carpinteria Valley Water District ("CVWD").

9. On January 9, 2018, Badger Meter contracted with Siemens under a Prime Contract ("Prime Contract") to implement Itron's proprietary OpenWay RIVA Advanced Metering System ("System").

1 10. Badger Meter’s Prime Contract was for a fixed-price, with a “not to exceed”
2 amount of \$220,374.00.

3 11. Under the Prime Contract, Badger Meter was to supply meters, RIVA
4 endpoints, and install (with Itron as the installation provider) RIVA Connected Grid Routers
5 (“CGR”), for CVWD.

6 12. As part of the Prime Contract, Badger Meter accepted that it was responsible to
7 Siemens/CVWD to achieve 99% endpoint coverage in six months—by September 28, 2018.

8 **C. Badger Meter Relied on Itron’s Quote when Badger Meter Executed the Prime**
9 **Contract with Siemens.**

10 13. Itron’s original quote to Badger Meter for the Project included eight CGRs for
11 a total value of \$52,104.00.

12 14. Badger Meter relied on Itron’s quote when Badger Meter executed the Prime
13 Contract with Siemens, as reflected by the fact that the Prime Contract shows using eight CGRs
14 for the Project.

15 15. But—in June 2017, after Badger Meter and Siemens executed the Prime
16 Contract—Itron re-quoted Badger Meter and increased the number of CGRs from eight to nine
17 to account for providing a “spare” CGR.

18 16. Itron never disclosed the need for a “spare” CGR during the original quoting
19 process.

20 17. Itron also priced the “spare” CGR \$300.00 higher than the other eight CGRs
21 (\$6,513.00 for the first 8 CGRs and \$6,813.00 for the spare CGR).

22 18. Badger Meter agreed to absorb the cost of the additional CGR, at the higher
23 price, in the interest of moving work on the System along and based on its long-term, successful
24 relationship with Itron.

D. March 2018: Badger Meter Subcontracts with Itron in the Scope of Work.

19. Effective March 28, 2018, Badger Meter subcontracted with Itron pursuant to a Scope of Work for the System (“Scope of Work”).

20. As part of this Scope of Work, Itron agreed that its infrastructure coverage would achieve 99% endpoint coverage and the CGRs would be installed within six months—by September 28, 2018.

21. Itron also warranted that its services provided under the Scope of Work would be professional and workmanlike. Further, Itron agreed to re-perform services at its costs if its services failed to meet this warranty, provided that Badger Meter notified Itron in writing of such deficient services within sixty days of the date that the services were initially performed.

E. The System Supplied by Itron Fails to Operate at 99% Throughout 2018.

22. Badger Meter kicked off its part of the Project in early 2018 and Itron installed the first two CGRs thereafter.

23. During the next few months, however, the reading success rate of the RIVA endpoints covered by those two CGRs was less than the required 99%.

24. Badger Meter, Siemens, CVWD, and Itron tried to fix these performance issues throughout 2018.

25. After some time, however, Itron stopped responding to Badger Meter and refused to assist its customers.

F. Notice of Breach: March 26, 2019.

26. Badger Meter sent Itron a Notice of Breach on March 26, 2019 (“Notice”).

27. The Notice explained that Itron was “in material breach” for failing to timely deliver, among other things, “a fully functioning ‘turnkey’ Itron Openway RIVA Advanced Metering Infrastructure (AMI) system for the Carpinteria Valley Water District.”

28. The Notice also specifically requested that Itron include Badger Meter’s Project Manager, Dan Milliron, on any communications with Siemens.

1 29. Yet, Itron's employees often communicated directly with Siemens, cutting Mr.
2 Milliron out of critical communications.

3 30. This negatively impacted Badger Meter's ability to address Siemen's needs and
4 violated Badger Meter's unambiguous request in its Notice.

5 **G. April 2019: Itron Re-estimates its Bid, Requiring \$122,634.00 More in Equipment**
6 **to Complete the Project.**

7 31. On April 3, 2019, six months after Itron was scheduled to have finished its work
8 under the Scope of Work, it sent Badger Meter a revised infrastructure layout proposal.

9 32. In this proposal, Itron estimated that the eight CGRs it originally included in its
10 bid were insufficient and instead recommended using 26 CGRs.

11 33. Increasing the number of CGRs from eight to 26 resulted in \$122,634.00 of
12 additional costs to Badger Meter.

13 34. And, even with this massive increase, Kevin Keim (Itron's Area Vice President
14 of Sales Public Power and Water – West) acknowledged that 26 CGRs would only cover 95%
15 of the 4,492 endpoints, as opposed to the 99% that Badger Meter had contracted with Siemens
16 to cover.

17 35. In addition, during the time Itron was supposed to be curing its breach, it failed
18 to respond to Badger Meter's phone and email requests and inquiries, which exacerbated
19 Badger Meter's damages.

20 36. Then, on July 8, 2019, Itron proposed reading the endpoints using mobile means
21 and proposed replacing the fixed-base endpoints with a cellular endpoint. CVWD rejected
22 both options as unacceptable.

H. Fall 2019: CVWD Demands to Switch to Proven Technology; Badger Meter Asks Itron to Cure; Itron Ignores Badger Meter.

37. Itron's breaches delayed the Project through the fall of 2019—more than a year after September 28, 2018, when Siemens, and Badger Meter through it, had promised to finish the Project.

38. In the fall of 2019, CVWD, through Siemens, asked Badger Meter to provide solutions to address Itron's failures by using proven technology (the ORION Cellular product).

39. Badger Meter initially declined to supply the ORION Cellular product because Badger Meter had contracted with Itron.

40. Badger Meter has since learned that the CVWD Project was one of the first applications of Itron's RIVA for a water utility and that Itron's propagation studies and layout techniques for that new product were underdeveloped and unproven when Itron submitted its quote for the Project to Badger Meter.

I. December 2019 and January 2020: Badger Meter Gives Itron Two More Opportunities to Cure.

41. On December 20, 2019, Badger Meter sent Itron a Notice of Breach and Opportunity for Cure ("Cure Notice"), asking Itron to make Badger Meter whole by paying \$788,775.00. The Cure Notice asked for a response by January 6, 2020.

42. The \$788,775.00 amount is the estimated cost for Badger Meter to provide equipment, expertise, and material to cure Itron's breach.

43. Itron acknowledged receipt of the Cure Notice but did not substantively respond.

44. Badger Meter sent Itron a revised Cure Notice on January 7, 2020 and asked Itron to respond by January 13, 2020. Itron never responded to this revised Cure Notice.

45. And in the meantime, Badger Meter has continued to incur financial, reputational, and lost opportunity damages.

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IV. COUNT ONE – BREACH OF CONTRACT

46. Badger Meter incorporates and restates the above paragraphs here.

47. At all relevant times, Badger Meter has fully performed its duties under the Scope of Work.

48. Itron had a duty imposed on it by the Scope of Work, as described in the paragraphs above.

49. Itron materially breached the Scope of Work by, among other things: (1) failing to deliver a System that covered 99% of the required endpoints by September 28, 2018; (2) failing to re-perform its services pursuant to the Scope of Work's warranty; and (3) failing to adequately communicate with Badger Meter.

50. As a result of Itron's past and ongoing material breaches, Badger Meter has incurred financial, reputational, and lost opportunity damages, in an amount no less than \$788,775.00.

V. PRAYER FOR RELIEF

WHEREFORE, Plaintiff Badger Meter prays for judgment as follows:

51. For judgment against Itron for breach of contract in an amount to be proven at trial, but in any event not less than \$788,775.00, including all contractual and/or statutory interest, attorneys' fees, and costs; and

52. For such other relief that the Court deems just, equitable, or proper.

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DATED this 27th day of March, 2020.

OLES MORRISON RINKER & BAKER LLP

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